

AG Contract No. KR02-1473TRN
ADOT ECS File: JPA 02-072
Project No. HRF-FLA-0-768
TRACS No. HF068 01C
Section: Butler Avenue/Enterprise Rd.
HURF Exchange Program

INTERGOVERNMENTAL AGREEMENT

BETWEEN
THE STATE OF ARIZONA
AND
CITY OF FLAGSTAFF

THIS AGREEMENT is entered into 5 December, 2002, pursuant to Arizona Revised Statutes, Sections 11-951 through 11-954, as amended, between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION (the "State") and the CITY OF FLAGSTAFF acting by its City Council and Mayor (the "City").

I. RECITALS

1. The State is empowered by Arizona Revised Statutes Section 28-6993(g) to enter into this agreement and has delegated to the undersigned the authority to execute this agreement on behalf of the State.
2. The City is empowered by Arizona Revised Statutes Section 48-572 to enter into this agreement and has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this agreement and has authorized the undersigned to execute this agreement on behalf of the City.
3. The State has approved the exchange of \$850,000.00 Highway User Revenue Funds (HURF) in Fiscal Year 2002 to the City for the construction of improvements to Butler Ave /Enterprise Rd., and such funds will be repaid to the State by withholding from the Flagstaff Metropolitan Planning Organization (FMPO) federal funds and the obligation authority for federal funds in the amount of \$1,037,467.00 in Fiscal Year 2002.

THEREFORE, in consideration of the mutual agreements expressed herein, it is agreed as follows

NO. 25661
Filed with the Secretary of State
Date Filed: 12/05/02
Petrey Bayless
Secretary of State
By: Danny D. Graenewald

II. SCOPE OF WORK

1. The City will:

- a. Provide design plans, specifications and such other documents and services required for construction bidding and construction.
- b. Call for bids and award one or more construction contracts for the project. Administer same, and make all payments to the contractor(s). Be responsible for any additional funds required to complete the project, and for any contractor claims for extra compensation due to delays or whatever reason. Comply with all applicable State laws, rules and regulations.
- c. Invoice the State for thirty percent of the project construction cost, at the start of construction.
- d. Invoice the State for thirty percent of the project cost, at the thirty percent and sixty percent project completion stages.
- e. Upon completion, approve and accept the project as complete and provide maintenance. Provide ADOT with a letter documenting the notice of the approval and acceptance of the project
- f. Invoice the State for the remaining ten percent of the project cost at the one hundred percent project completion stage after the City, FMPO, and the State (ADOT) representatives have completed final project review.

2. The State will:

- a. Within 30 days after receipt and approval of an invoice, advance the City HURF funds in accordance with paragraph II, 1c., d., f.
- b. Withhold from FMPO, federal funds and the obligation authority of federal funds in the amount of \$1,037,467.00 in Fiscal Year 2002 for construction.

III. MISCELLANEOUS PROVISIONS

1. The State assumes no liability under this agreement. The City assumes full responsibility for the design, plans and specifications, reports, the engineering in connection therewith, cost over-runs and claims. It is agreed that the State's participation is confined solely to advancing highway user revenue funds; that any damages arising from carrying out, in any respect, the terms of this agreement or any modification thereof, shall be solely the liability of the City and that the City hereby agrees to save and hold harmless and indemnify from loss the State, any of its departments, agencies, officers or employees from any and all cost and/or damage incurred by any of the above and from any other damage to any person or property whatsoever, which is caused by any activity, condition, or event arising out of the performance or nonperformance of any provisions of this agreement by the State, any of its departments, agencies, officers and employees, the City, any of its agents, officers and employees, or any of its independent contractors. Costs incurred by the State, any of its departments, agencies, officers or employees shall include in the event of any action, court costs, and expenses of litigation or attorneys' fees.
2. This agreement shall remain in force and effect until completion of said project; provided, however, that this agreement, except any provisions herein for maintenance, which shall be perpetual, unless assumed by another governmental entity, may be canceled at any time prior to the award of a construction contract, upon thirty (30) days written notice to the other party.
3. This agreement shall become effective upon filing with the Secretary of State.
4. This agreement may be canceled in accordance with Arizona Revised Statutes Section 38-511.
5. The provisions of Arizona Revised Statutes Section 35-214 are applicable to this contract.

6. In the event of any controversy, which may arise out of this agreement, the parties hereto agree to abide by required arbitration as is set forth for public works contracts in Arizona Revised Statutes Section 12-1518.

7. All notices or demands upon any party to this agreement shall be in writing and shall be delivered in person or sent by mail addressed as follows:

Arizona Department of Transportation
Joint Project Administration
205 S. 17th Avenue – Mail Drop 616E
Phoenix, AZ 85007
FAX (602-712-7424


City of Flagstaff
Deputy City Manager
211 W. Aspen St.
Flagstaff, AZ 86001-5399

8. Attached hereto and incorporated herein is the written determination of each party's legal counsel that the parties are authorized under the laws of this state to enter into this agreement and that the agreement is in proper form.

IN WITNESS WHEREOF, the parties have executed this agreement the day and year first above written.

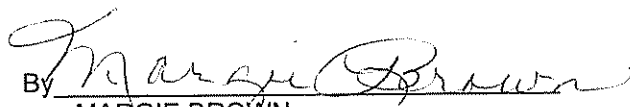
CITY OF FLAGSTAFF

STATE OF ARIZONA
Department of Transportation

By 
for JOSEPH DONALDSON
Mayor

By 
DALE BUSKIRK, Acting Division Director
Transportation Planning Division

ATTEST

By 
MARGIE BROWN
Deputy City Clerk

JPA 02-072

RESOLUTION

BE IT RESOLVED on this 22nd day of August, 2002, that I, the undersigned MARY LYNN TISCHER, Director of the Transportation Planning Division, have determined that it is in the best interests of the State of Arizona that the Department of Transportation, acting by and through the Transportation Planning Division, to enter into an agreement with the City of Flagstaff, for the purpose of the exchange of \$850,000.00 in Highway User Revenue Funds (HURF) to the City for the construction of improvements to Butler Ave./Enterprise Rd., for the benefit and safety of the traveling public.

Therefore, authorization is hereby granted to draft said agreement, which, upon completion, shall be submitted to the Deputy Director of Transportation Planning Division for approval and execution.

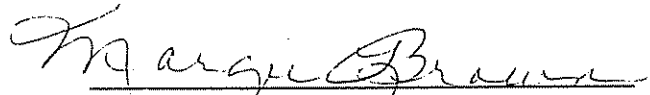


MARY LYNN TISCHER, Division Director
Transportation Planning Division

CERTIFICATION

I, MARGIE BROWN, Deputy City Clerk of the City of Flagstaff, Arizona, do hereby certify that the attached is a full, true, and correct copy of Resolution No. 2002-78 adopted by the Flagstaff City Council at their Meeting held November 5, 2002.

IN WITNESS WHEREOF, I have hereunto set my hand and impressed the official Seal of the City of Flagstaff, this 7th day of November, 2002.


DEPUTY CITY CLERK

(SEAL)

RESOLUTION NO. 2002-78

A RESOLUTION APPROVING AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE STATE OF ARIZONA THROUGH THE DEPARTMENT OF TRANSPORTATION AND THE CITY OF FLAGSTAFF AUTHORIZING EXCHANGE OF HIGHWAY USER REVENUE FUNDS FOR THE BUTLER/ENTERPRISE ROAD RECONSTRUCTION PROJECT

WHEREAS, the State of Arizona ("State") through the Arizona Department of Transportation ("ADOT") has approved the exchange of \$850,000.00 in Highway User Revenue Funds ("HURF Funds") in Fiscal Year 2002 to the City of Flagstaff ("City") for the construction of improvements for the Butler Avenue/Enterprise Road project ("Project"); and

WHEREAS, the City intends to repay the HURF Funds to the State by allowing the withholding of federal funds from the Flagstaff Metropolitan Planning Organization ("FMPO") and the obligation authority for the funds in the amount of \$1,037,467.00 in Fiscal Year 2002 to the City; and

WHEREAS, the City and the State desire to enter into an intergovernmental agreement ("IGA"), a copy of which is submitted as an attachment to the Staff Summary Report in support of this Resolution, in order to authorize the exchange of HURF Funds as described above for improvements to the Project and pursuant to which, the City would provide design services, including construction plans and documents required for bidding and construction of the Project; and

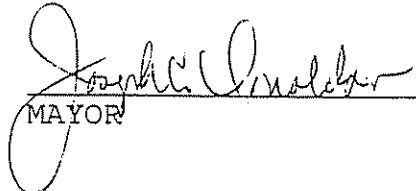
WHEREAS, the State and the City's Capital Improvements Department desire to obtain City Council approval for the City's entry into the proposed IGA; and

WHEREAS, the City Council has reviewed the proposed IGA and finds that it is in the best interests of the City to enter into the IGA with the State;

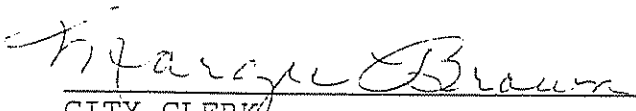
NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF FLAGSTAFF AS FOLLOWS:

SECTION 1. That the Intergovernmental Agreement between the State and the City submitted as an attachment to the Staff Summary Report for the City Council meeting of November 5, 2002, in support of this Resolution be hereby approved and the Mayor be authorized and directed to execute the Intergovernmental Agreement on behalf of the City of Flagstaff.

PASSED AND ADOPTED by the City Council and approved by the Mayor of the City of Flagstaff this 15th day of November 2002.


MAYOR

ATTEST:


CITY CLERK

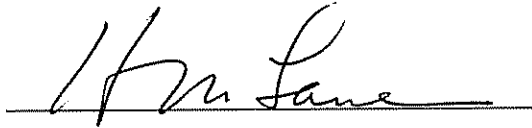
APPROVED AS TO FORM:


CITY ATTORNEY

APPROVAL OF THE CITY OF FLAGSTAFF ATTORNEY

I have reviewed the above referenced proposed intergovernmental agreement, between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION, (the "State") and the CITY OF FLAGSTAFF acting by its City Council and Mayor (the "City") and declare this agreement to be in proper form and within the powers and authority granted to the City under the laws of the State of Arizona. No opinion is expressed as to the authority of the State to enter into this agreement.

DATED this 8th day of November, 2002.



Attorney



JANET NAPOLITANO
ATTORNEY GENERAL

STATE OF ARIZONA
OFFICE OF THE ATTORNEY GENERAL
TRANSPORTATION SECTION
1275 WEST WASHINGTON STREET, PHOENIX, AZ 85007-2926

TRN Main: (602) 542-1681
Direct: (602) 542-8881
Fax: (602) 542-3641

MAIN PHONE: (602) 542-1681
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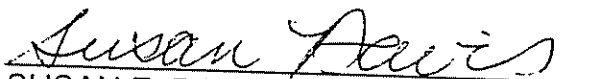
INTERGOVERNMENTAL AGREEMENT DETERMINATION

A.G. Contract No. KR02-1473 TRN (JPA 02-072), an Agreement between public agencies, has been reviewed pursuant to A.R.S. § 11-952, as amended, by the Undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining Parties, other than the State or its agencies, to enter into said Agreement.

DATED November 27, 2002.

JANET NAPOLITANO
Attorney General


SUSAN E. DAVIS
Assistant Attorney General
Transportation Section

/srs

Att.